IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 23 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATKUMAR AMRATLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 23 of 2002

MR AD SHAH for Petitioners No. 1-7

MR BD DESAI Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/03/2002

ORAL JUDGEMENT

This revision application has been preferred by the original accused of Criminal Case No. 498 of 1992 instituted on the strength of a complaint filed by the Drug Inspector Mr. RK Prajapati on 15.6.1992 for the

offences punishable under section 27 and 27(A) read with section 18(a)(i), 18(a)(vi), 18(c) and sec. 28 and 28(a) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act")

The criminal complaint by the Drug Inspector for the offences punishable under section 18(a)(1), 1`8(b), 18(a)(vi), 18(c) as well as Section 27, 28 and 28(a) of the Drugs and Cosmetics Act came to be filed in respect of searches carried out by the Drug Department at different Medical Stores. The samples collected during the searches carried out on 15.7.1991 and 16.7.1991 of the Drugs were sent for the analysis to Government Analyst, Vadodara. According to the prosecution, the same were found not according to the standard, misbranded, adulterated and spurious, and therefore, the accused were informed about the report of the Analyst and, thereafter the complainant has filed the complaint on 16.6.1992 in the Court of Ld. Chief Metropolitan Magistrate, Ahmedabad.

The complainant being public servant, ld. Metropolitan Magistrate issued process without recording formal statement of the complainant on oath. The case against the present petitioner registered as a private complaint within the meaning of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") and is not a case instituted on police report. There was no progress in the criminal case registered against the present petitioner for about 3 and 1/2 years, it is on record that on 20.1.1996 learned APP appearing for the complainant (State) has submitted an application ex. 5 requesting the Ld. Chief Metropolitan Magistrate to commit the case to the Court of Sessions as the offence under sec. 27(a) of the Act providing life imprisonment was exclusively triable by the Court of Sessions. This application was resisted by the petitioners-accused and a written resistance was placed before the ld. Chief Metropolitan Magistrate (Hereinafter referred to as the "ld. Magistrate"). Considering the rival contentions, ld. Magistrate rejected the application filed by the Ld. APP vide order dated 29.9.2001, i.e. to say that after lapse of about 5 and 1/2 years.

The applicant-State of Gujarat being aggrieved by the said order passed by the ld.Magistrate invoked revisional jurisdiction u/s. 397 of CrPC and moved revision application being Criminal Revision Application NO. 178 of 2001 before the Court of City Sessions, Ahmedabad. Considering and accepting the submissions of learned APP, the learned Addl. City Sessions Judge

(Court No. 10), Ahmedabad allowed the revision application and in turn quashed and set aside the order passed by the ld. Magistrate dated 29.9.2001, and the ld. Magistrate has been directed to commit the case against the present petitioners to the Court of Sessions under sec. 209 of Cr.P.C. at the earliest.

The Original accused-present petitioners being aggrieved by the order passed by the ld. Addl. City Sessions Judge on 21.12.2001 has preferred this revision application and has assailed the legality of the order.

I have heard learned counsel Mr. AD Shah for the petitioner and Mr. BD Desai learned APP for the respondent-State at length.

According to the petitioners, ld. Addl. City Sessions Judge has seriously erred in not considering the relevant provisions of the Act in its proper perspective, especially the provisions of section 32 and 36 of the said Act. It is also the grievance of the petitioner that the ld. Judge ought to have seen that legislature has provided for trial by Metropolitan Magistrate or a Judicial Magistrate First Class of all the offence punishable under Chapter-IV of the Act. It has equally considered the general powers under CrPC of such Judicial Magistrate and empowered concerned Magistrate to impose appropriate sentence authorized by the Act. It is submitted that section 26 of the Cr.P.C. clearly provides for jurisdiction and sec. 29 empowers to impose sentence for the offence triable by the Metropolitan Magistrate and Judicial Magistrate First Class. Section 36 of the Act ought to have been considered in its correct perspective. Ld. Addl. City Sessions Judge ought to have held that Parliament must be conscious of the provisions of sec. 26 and 29 of the CrPC. According to Mr. Shah, the provisions of sec. 36 of the Act being special provision in a special Statute, begins with non-obstante clause. The scope to read section 29 of CrPC was not at all there, however, ld. Sessions Judge has done the exercise to evaluate the entire scheme of CrPC and the Act i.e. Drugs & Cosmetics Act and has tried to see that as to whether there is any disharmony or conflict. The decision considered by the ld. City Sessions Judge are also not in correct perspective and especially the judgment in the case of Ranjit Chatterjee vs. State of West Bengal (1986 Criminal Law Journal p. 1847) of Calcutta High Court has not been considered in the true spirit of its ratio. According to Mr. Shah this special act empowers the Metropolitan Magistrate or Judicial Magistrate First Class to pass any sentence

authorized by the Special Act. Section 32 read with section 36 of the Act provides for special procedure under Special Act and when the offence under sec. 27(a) is triable by the Magistrate, the Parliament has provided for empowering such Magistrate to impose such punishment as prescribed under sec. 27(a) of the Act. The applicability of the CrPC is totally excluded in light of the provision of sec. 5 of CrPC. Mr. Shah has quoted the observations of the Calcutta High Court in the case of Ranjit Chatterjee (supra), which is also reflected in the ground-(d) of the Memo of Revision. It is observed in the decision that :

> "Reading S. 5 and clause (b) of s. 26 of the Code of Criminal Procedure, it is, therefore, clear that the special jurisdiction and power vested in the learned Magistrate under the special statute is not affected by any other specific provision to the contrary either in the Code itself or in the special statute completely covering the field of the other and laying down a contrary rule so as to altogether nullify the other. There is thus really no conflict between the special jurisdiction and powers given to the learned Magistrate under the special statute and the first schedule concerning other laws."

According to Mr. Shah though the order passed by the Ld. Magistrate is not a detailed order discussing the entire set of argument advanced before me and has not discussed all the provisions brought to the notice but ultimately the finding of the ld. Magistrate is in accordance with law and the Ld. Addl. City Sessions Judge ought not to have disturbed the finding. The revision application of the State should have been dismissed. It is one of the facet of the argument of Mr. Shah that ld. Addl. City Sessions Judge ought to have called for the R & P from the Court of Ld. Magistrate, Ahmedabad. In such an eventuality, there is scope to a Chief Metropolitan Magistrate to send the detailed report stating reasons for the orders passed by the presiding judge of the Court. The written resistance also could have assisted the ld. Addl. City Sessions Judge in appreciating the legality and propriety of the order passed by the Ld. Magistrate. Considering the jurisdiction of revisional court and compass, according to Mr. Shah, the error accrued because the ld. Addl. City Sessions Judge has not called for R & P otherwise the ld. Addl. City Sessions Judge ought not have disturbed the finding. During the course of oral submissions, Mr. Shah has taken this Court through

certain decisions including the decision referred by the ld. Addl. City Sessions Judge in the impugned order.

The decision of the Apex Court in the case of State of Uttar Pradesh vs. Khushi Ram, reported in AIR 1960 SC p. 905 is brought to the notice of this Court dealing with mostly similar provisions of Prevention of Food Adulteration Act i.e. sec. 21 of PFA Act, 1954. The decision of the Calcutta High Court in the case of State vs. Bejoy Kr. Chatterjee and Ors. reported in 1977 Cr. L.J. p. 1503 is also brought to the notice by Mr. Shah. In support of his arguments Mr. Shah was analyzing the scheme of section 32 of Cr.P.C.(Old) and other relevant provisions in reference to section 32 and 36 of the Act. Submissions of ld. Counsel Mr. S.N. Dey advanced before the Calcutta High Court while assisting the High Court in course of hearing in case of Bejoy Kr. Chatterjee (supra), according to Mr. Shah, indicates the correct proposition of law. In the present case, the petitioners had never prayed for committal of the case to the Court of Sessions nor the ld. Metropolitan Magistrate had initiated committal proceeding but it was wrongly attempted by Ld. APP, the same was resisted. So, the present case cannot be equated with the case where the legality and validity of the committal proceedings under sec. 209 is challenged at a later stage or at the fag end of trial. According to Mr. Shah that there was no need for the Ld. Addl. City Sessions Judge in disturbing the finding recorded by the Ld. Magistrate.

On the other hand, ld. APP Mr. BD Desai has argued that considering the gravity of the offence and punishment prescribed, the order passed by the Ld. City Sessions Judge requires to be upheld and the revision should be dismissed. According to Mr. Desai, if the case is committed to the Court of Sessions, the accused are not likely to be prejudiced. They have also failed in showing that the order passed by the Ld. Addl. City Sessions Judge is likely to prejudice either side and the trial, if conducted, in the court of sessions, it can be said to be a trial before the court having proper jurisdiction. The decision of the Calcutta High Court brought to the notice of the learned Addl. City Sessions Judge, according to Mr. Shah, has been correctly interpreted. When two views were brought to the notice of Ld. Sessions Judge having only persuasive value more rational found by the Judge has been accepted. In the present case, merely because the original accused persons

are not to receive or to get the set of documents or the statements of witness as the same has not been recorded by the ld. Magistrate, it would be incorrect to presume that this would lead to an unfair trial. The judgment of the Apex Court reported in (2000)2 SCC p. 230 has been considered and the submissions made in reference to section 208 of Cr.P.C. have not been accepted in the correct legal perspective as the Apex Court has held that the inquiry as contemplated under sec. 202(2) in the case of exclusively triable by the Court of Sessions is directory and not mandatory. In the present case, as the complainant is a public servant and the court has issued process without recording formal statement even of the complainant on oath, there may not be any document which can be provided to the accused at the time of committal of the case. According to Mr. Desai, no serious error has been committed in interpreting the legal provisions and the citations brought to the notice of the ld. Addl. City Sessions Judge. Of course, Mr. Desai has fairly submitted that the decision of the Apex Court reported in case of State of Uttar Pradesh vs. Khushi Ram (supra) if would have been brought to the notice of the Ld. Addl. City Sessions Judge, than the ld. Judge might have recorded the finding otherwise. Mr. Desai has also fairly submitted that if this Court feels that the ratio of the decision of the case of State of Uttar Pradesh vs. Khushi Ram (supra) was not brought to the notice of the Ld. Addl. City Sessions Judge and it goes to the root of the merits of the matter, than this Court should send the matter back to the ld. Addl. City Sessions Judge directing her to call for the R & P from the Court of Ld. Chief Metropolitan Magistrate, Ahmedabad and to decide the issue afresh in the light of the said decision of the Apex court. For short, the submissions of Ld. APP Mr. Desai is of two fold. To appreciate the case of the present petitioners, it is necessary to refer the relevant provisions of section 29 of CrPC (Sec. 32 of the Old Code) because as the ld. Addl. City Sessions Judge has tried to see harmony/disharmony and its effect in reference to section 32 and 36 of the Act. Section 29 of the Code reads thus:

S. 29. Sentence which Magistrate may pass.-(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or imprisonment for life or of imprisonment for a term exceding seven years.

(2) The Court of Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not

exceeding five thousand rupees, or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

It is pertinent to note that mostly the empowering sections have automatic effects providing embargoes and/or limitations. Courts have dealt with qualifying areas of such enactments with utmost care. The quantum of punishment in terms of substantive sentence and also in terms of fine is concerned, the Chief Metrpolitan Magistrate and Chief Judicial Magistrate are empowered to impose any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years. There is no embargo as the amount of fine is concerned. The Chief Metropolitan Magistrate is empowered to impose any amount of fine, of course, but subject to restriction of section 63 of IPC. Section 63 of IPC provides that the amount of fine should not be excessive. When a similar complaint is filed in the Court of JMFC, whether the embargo as to the amount of fine and the quantum of punishment prescribed in sub section 2 of section 29 whether would operate is also one of the question raised by Mr. Shah during the course of submissions and according to him, no such embargo would operate irrespective of the limitations and empowerment of sub section 2 of section 29 because sec. 36 of the Act provides and empowers JMFC to pass any sentence authorized by this Act (i.e. Drugs & Cosmetics Act, 1940) in excess of his powers under the said code. The word "said Code" is in reference to CrPC, 1973. The non-obstante clause shall have to be read in reference to the entire scheme reflected in section 36 of the Act. It would be proper, at this stage, to reproduce the relevant section 36 of the Act, which reads as under:

"36. Magistrate's power to impose enhanced penalties.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), it shall be

lawful for any Metropolitan Magistrate or any Judicial Magistrate of the First Class to pass any sentence authorized by this Act in excess of his powers under the said Code."

As per the law of interpretation, non-obstante clause have preventive effect, means while reading section 36 of a special statute, the reader is prevented from reading or considering the provisions which are not supposed to be looked into (i.e. sec. 26 & 29 of CrPC). So, any provisions of CrPC empowering Magistrate to impose penalties are not required to be read or considered by any Metropolitan Magistrate or JMFC while passing any sentence authorized by the Act. So, JMFC can impose the amount of fine in excess of Rs. 5000/ and can impose sentence more than authorized under the CrPC. The back-bone of submission of Mr. Shah has remained consistent through out i.e. before the Ld. Magistrate and before the Ld. Addl. City Sessions Judge and also before this Court that the empowerment provided under sec. 36 would go to the extreme limits i.e. life imprisonment. In reference to section 36 of IPC a JMFC can impose life imprisonment and a fine of any amount which is not excessive in eye of law if such offence is proved and need severe punishment. The certified copy of the written resistance submitted to the ld. Magistrate is also on record vide Annexure-B. The Act being a Special Act dealing with the offence relating to the Drugs and Cosmetics provides for some special procedure and in the procedure, the Act has simultaneously provided for some wide powers to a Magistrate who is trying the criminal case filed for the offence punishable under this Act. In case of Bejoy Kr. Chatterjee (supra) the reasons developed and given by Calcutta High Court says that

"we are however, unable to accept this contention. The distinction between S. 26 provides for jurisdiction and S. 29 which corresponds to S. 32 of the old Code merely imposes a limit as to sentences which Magistrates may pass are quite distinct and distinguishable from each other. The provision in S. 36 which clearly seeks to override the bar as to sentence which a Magistrate can pass without overriding the provision as to jurisdiction in S. 26, cannot be so interpreted as to do the latter. There are provisions in the said Act itself, like S. 15 and S. 32 (prior to its amendments) which provided for jurisdictional matters. The legislature was therefore, quite conscious about

the necessity of providing for jurisdiction as when it thought necessary, but did not do so in enacting s. 36 and hence that section in our opinion should not be so interpreted as to prescribe any specified jurisdiction in the manner contended for by Mr. Dey. In the circumstances, we accept the contention of Mr Basu and the learned Advocate for the State who was appearing before us and hold that the learned Chief Judicial Magistrate was right in his view that the offence under S. 27(b) is exclusively triable by Court of Session and he himself had no jurisdiction to try such an offence."

However, in case of Ranjit Chatterjee (supra) after referring the case of Khusi Ram (supra) it has been observed that :

"Thus, in view of provisions relating to Special Act as contained in Section 36 of the Drugs & Cosmetics Act, 1940, the question of committing the case to the Court of Sessions under section 209 does not arise."

Attention of this Court has been drawn to section 21 of PFA Act, 1954. It would be proper to quote the relevant provisions, so that the ratio of the decision in reference to section 21 of PAF Act can be appreciated in appropriate perspective. As referred earlier, this provision is mostly similar to section 36 of the Act. Section 21 of the PFA Act reads as under:

"Section-21: Magistrate's power to imposed enhance penalties.-

Notwithstanding anything contained in Sec. 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate or any Judicial Magistrate of the first class to pass any sentence authorized by this Act, except a sentence of imprisonment for life or for a term exceeding six years, in excess of his power under the said section."

Section 21 was amended in the year 1976 with effect from 1.4.1976. Prior to 1976, in the section, there was reference to section 32 of CrPC, 1898. Section 32 of CrPC(old) referred in the original section 21 deals

with the sentence which Magistrate may pass. While in the amended section 21, section 29 of the new CrPC which correspond to section 32 of Old CrPC is referred. Section 29 of new CrPC is nothing but earlier provision of sec. 32 with certain modifications. After coming into operation of new CrPC, 1973, the provisions of section 21 of PFA Act has been amended. There are provisions to impose the life imprisonment or to impose sentence for a term exceeding six years in PAF Act, therefore, it is specifically provided vide section 21 of PFA Act that it shall be lawful for any Metropolitan Magistrate or any Judicial Magistrate of the First Class to pass any sentence authorized by this Act which may go up to six years. The phrase "in excess"of its powers under the said section 21 of PFA Act in reference to non-obstante clause if looked into it can be inferred that section sub-section -2 of section 29 of CrPC putting an embargo shall have no effect and it would not be correct or legal to say that a Magistrate of the First Class would not be entitled to impose imprisonment beyond the period of six years and he cannot impose fine exceeding Rs. 5000/ or both while trying the offence punishable under the PFA Act. Judicial Magistrate of the First Class can impose imprisonment of six years and can impose fine which cannot be said to be excessive in reference to section 63 of IPC irrespective of the embargo of Rs. 5000/ in above referred sub-section 2 of section 29 of CrPC. In the same way, the Court of Chef Metropolitan Magistrate have powers of the Court of Chief Judicial Magistrate but Chief Metropolitan Magistrate or Chief Judicial Magistrate would not be entitled to impose imprisonment exceeding six years, though sub-section(1) of section 29 authorizes the Chief Judicial Magistrate to impose imprisonment for the term not exceeding seven years. The Chief Metropolitan Magistrate and Chief Judicial Magistrate, therefore, shall have limit in their power of imposing imprisonment up to six years because of the scheme of PFA Act.

So the type of offences contemplated to be committed to the Court of Sessions, the CrPC would not be relevant, irrespective of the quantum of punishment. In number of decisions of this Court and the Apex Court while dealing with the provisions of Special Statute in reference to the general law and procedural laws such as CrPC, CPC, Limitation, Meettings, Interest, Maintenance etc. has observed that if there is clear inconsitency between the two, the provisions of Special Law/Statute would prevail especially when overriding effect of the non obstante clause is there. Section 5 of CrPC is very well available and the same was brought to the notice of

the Courts below. It is true that a special enctament or rule cannot be held to be overridden by a later general enactment or simply because the latter opens up with a non-obstante clause, but in the present case, the subsequent enactment, as amended, give overriding effect. Again there is a clear inconsistency or disharmony between the two before giving an overriding effect to the non-obstante clause, there should be a clear inconsistency between the two. It would be beneficial to refer the decision in the case of R.S. Ragunath vs. State of Karnataka, reported in AIR 1992 SC p. 81 (relevant page 89) because the ratio of this decision is relevant for our purpose.

In the case of Subhas Chander vs. State, reported in 1978(II)PFA Cases, p. 219, (Allahabad High Court), the provisions of sub-section 2 of sections 20 & 21 of the PFA Act are considered. The appellant accused was committed to the Court of Sessions for the offence punishable under sec. 7 and 16 of PFA Act and than ultimately tried by the Sessions Judge. It was argued before the Allahabad High Court that the trial by Assistant Sessions Judge was illegal as sub-section 2 of section 20 of PFA Act says that a Metropolitan Magistrate or the Judicial Magistrate of the First Class shall try any offence under said Act, and so, Assistant Sessions Judge was not empowered to conduct the trial on committal and there was no scope to commit the case to the court of Sessions. As per above referred section 21 of PFA Act, the Allahabad High Court has observed that that section 21 clearly provides that Judicial Magistrate of the First Class or a Metropolitan Magistrate can award maximum sentence of six years even under the provisions of PFA Act. Uttar Pradesh amendment has provided life imprisonment. Obviously, that sentence could not be awarded by the Magistrate and, therefore, the committing of the case to the Court of Sessions was fully justified. But, it is pertinent to note that under sec. 36 of Drugs & Cosmetic Act there is no such embargo as section 21 of PFA Act. Section 21 of PFA Act is not a disabling the provision and that it did authorizes the Magistrate of the First Class to award the sentence beyond the limits prescribed under sec. 29 of CrPC. If Magistrate commits the case to the Court of Sessions considering the full sentence prescribed by the Act than the same would not be a nullity nor this provision interfere with the jurisdiction of the Court of Sessions to deal with the matter committed to it inspite of its provisions. Section 36 of the Act is enabling provisions and when a Judicial Magistrate of the First Class or Metropolitan

Magistrate or the Chief Metropolitan Magistrate have powers to impose enhanced penalty notwithstanding anything contained in the CrPC, 1973, there is no need to commit the case to the court of Sessions.

Section 36 of the Drugs & Cosmetics Act has been amended from time to time. In the chronology of the amendment in the section becomes relevant in reference to the reasonings developed by the Ld. Addl. City Sessions Judge. Question is not of that which is the lowest court but of appropriate or proper court. When the case is instituted and is being tried by appropriate court, order to commit that case to the court of Sessions is not warranted. Section 34(A) of the Act is relating to offences by Government departments. In the year 1964 and 1983 the Act has been amended. The words and figures "S. 32 of " used in original section 36 were omitted with effect from 15.9.1964. Thereafter, "the Code of Criminal Procedure, 1973 (2 of 1974)" are inserted in the year 1983 with effect from 1.2.1983. The words and figures "S. 32 of" in the original section 36 were omitted with effect from 15.9.1964. So, the intents of the legislature is very much clear when the section 36 has been given shape appropriately and it provides that irrespective of the provisions of section 29 of CrPC, the Magistrate of the First Class or any Metropolitan Magistrate can try the case and can impose enhanced penalty and can pass any sentence authorized by the Court in excess of his powers in the CrPC.

In the case of Prem Pal Varshney vs. Union of India, reported in 1990 Cri.L.J. p. 989, Allahabad High Court held that maximum punishment that could be awarded for imprisonment of life and, therefore, such case exclusively triable by the Court of Sessions. Ld. Addl. Chief Metropolitan Magistrate could have awarded maximum sentence of 7 years under sec. 29 of the CrPC cannot try the case himself and he has to commit the case to the Court of Sessions. In para-11 of the judgment, the Court has observed that:-

"Applying these principles of interpretation Section 36 of the Act and Section 29 of the code have to be harmoniously interpreted. While interpreting a particular provision possible injustice or absurdity have also to be taken into account. The legislative history has also to be taken note of. Apparently Section 29 was enacted with a view that at the time of awarding punishment if some more sentence was required

> which was beyond his power under the Code, in that quantum of sentence sought to be imposed was beyond the power of Magistrate under Section 29 of the Code, in that event he could not pass a sentence of life imprisonment or a sentence of imprisonment for a term exceeding seven years. In such situations provisions of section 36 of the Act were not applicable. In the present case, the sentence sought to be imposed was of life imprisonment whereas Chief Judicial Magistrate was not empowered to pass a sentence of life imprisonment or a sentence of imprisonment for a term exceeding seven years, hence obviously, it was beyond his power to impose the sentence contemplated under the aforesaid sections of the Act."

The Allahabad High Court by referring the relevant provisions of section 207, 208 and 209 of CrPC, has observed that the relevant part of section 209 provides, in case, "it appears to the Magistrate" that the offence is triable exclusively by the Court of Sessions, he shall commit the case to the Court of Sessions, after complying with the provisions of Section 207 and 208 of the Code. This decision is mainly based on the ratio propounded by the Allahabad High Court in the case of Dr. Ravindra Prakash Arya vs. Union of India, reported in 1984 Cri.L.J. p. 1321. The ratio of both the decisions of the Allahabad High Court have only persuasive value. Both these decisions are mainly on the general principles of interpretation, the Court has not considered the overriding effect of non obstante clause in a special law. The backbone of these decisions is that there should be harmoniously reading and interpretation of section 36 of the Act and section 29 in reference to sec. 209 of CrPC. The courts are supposed to consider, while dealing with a particular provision of law about the possibility of injustice or absurdity. In reference to legislative history mentioned in para-17 of the judgment, it is observed by the Allahabad High Court that "the intention of the legislature is that when it comes into view the Magistrate that the case is triable by the Court of Sessions, he has no option in the matter but to commit it to the Court of Sessions. There appears to be another reason why under Section 36 of the Act the Magistrate's power, to impose penalty has been provided, to the effect that he can pass any sentence authorised by this Act in excess of powers under the Code" and where the quantum of sentence sought to be imposed is beyond the powers of Magistrate under sec. 29 of the Code, than in that event, he could not pass a sentence of life

imprisonment or a sentence of imprisonment for a term exceeding seven years, in such a situations, the provisions of section 36 of the Act could not be made applicable, as per the decision in the case of Ranjit Chatterjee (supra) is besides the point.

Drugs & Cosmetics Act is a special law within the meaning of Sec. 41 of IPC. The Allahabad High Court ultimately has held that acts of committing a case to the Court of Sessions would not create prejudice and in case, the case if committed to the Court of Sessions, the accused shall have an opportunity of trial by more experienced and judicially superior court as compared to the court of Judicial Magistrate of the First Class or Chief Judicial Magistrate and, therefore, the act of committal of the case to the Court of Sessions has been upheld. The case referred by the Ld. Addl. City Sessions Judge reported in 1990 Cr.L.J. (supra) is a case where Ld. Chief Judicial Magistrate, on the application made by the Drug Inspector was requested to commit the case to the Court of Sessions and the Ld. Addl. Chief Judicial Magistrate held that there is no need to commit the case to the Court of Sessions. Against that order, Union of India had filed revision application which was allowed by the Court of Sessions and Ld. Magistrate was asked to commit the case to the Court of Sessions. The fact situation of the case on hand, is mostly similar where the ld. Metropolitan Magistrate, Ahmedabad city, Ahmedabad has rejected the application preferred by the ld. Public Prosecutor to commit the case of the present petitioners to the Court of Sessions and the revision preferred by the State has been allowed by the ld. Addl. City Sessions Judge. The decision in the case of Ranjit Chatterjee (supra) was brought to the notice of ld. Addl. City Sessions Judge where the Calcutta High Court has held that offence under amended section 27(a)(ii) punishable with life imprisonment is not an offence exclusively triable by the Sessions Court. By virtue of s. 36 of the Act, the Magistrate is competent to try the accused and the committal of the case under sec. 209 for trial to the Court of Sessions is neither correct nor required. The calcutta High Court has observed that "ordinarily the offences under the Act are not triable by the sessions court and the Magistrate is competent to try the same. The Calcutta High Court has referred one decision i.e. 1960 Cr.L.J. p. 1378(SC) in the case of State of Uttar Pradesh vs. Khushi Ram. The ratio of the decision of the Apex Court has not been considered by the ld. Addl. City Sessions Judge. Mr. AD Shah appearing for the petitioner has fairly conceded that though he had argued

the revision application before the Ld. Addl. City Sessions Judge, but at the relevant point of time, he could not analyse the ratio of the decision of the Apex Court otherwise the findings of the ld. Addl. City Sessions Judge could have been different than the present one. While dealing with the section 21 of PFA Act, the Apex Court has considered the effect of section 32 and section 347 of CrPC (old) where the Apex Court has held that the Magistrate is competent to award full sentence. It was erroneous to commit the case to the Court of Sessions, but in the case before the Apex Court, the accused had already faced trial and was convicted. So, by reversing the ratio of the Allahabad High Court, reported in AIR 1959 (Allahabad) p. 778 has held that the trial and conviction by latter Court i.e. Sessions Court would not be without jurisdiction. Section 32 of the CrPC would not apply in such cases. It would be proper to quote relevant part of the decision of the Apex Court because the High Court had said that the committal of the case to the Court of Sessions was bad in law. The Apex Court has held that :

"The respondent then appealed to the High Court at Allahabad. Mulla J. who heard the appeal pointed out that the learned Judicial Magistrate had overlooked the provisions of S. 21 of the Act which provides that notwithstanding anything contained in S. 32 of the Code it shall be lawful for a Magistrate of the first class to pass any sentence authorized by the Act in excess of his powers under S. 32 of the Code. The learned Judge observed that the learned Magistrate was therefore quite competent to award all punishments that the law required and had no reason to commit the respondent to a Court of Session. He took the view that a Court of Session could try only those cases which were legally and properly committed to it by a Magistrate and that S. 21 of the Act was not only an enabling provision but also a disabling one. He held that S. 21 of the Act prevented a commitment to the Court of Session by a Magistrate of the first class. He observed,

"Where a special Act has made a special provision for punishment to be awarded by a Magistrate irrespective of the limitations placed upon his powers under the Criminal Procedure Code, it amounts to an abrogation of the general law and

the provisions of S. 347 of the Criminal Procedure Code cannot be applied to such a case."

In this view of the matter he held that the learned Judicial Magistrate had no power to commit the respondent to the Court of Sessions for trial and the learned Sessions Judge had no jurisdiction to try the case. He thereupon set aside the order of conviction and the sentence passed against the respondent and remanded the case to the District Magistrate of Barabanki to be transferred by him to the Court of a competent Magistrate for trial and disposal. The State has appealed to this Court against the judgment of Mulla, J.

We are unable to agree with the view of Mulla, J. that the learned Sessions Judge had no jurisdiction to try the case. We do not think that s. 21 of the Act is a disabling provision. All that it does is to authorise a Magistrate of the first class to award a sentence beyond the limits prescribed for him under S. 32 of the Code. it does not affect the provisions of Ss. 207 and 347 of the Code, nor has it anything to do with the jurisdiction of a Court of Session. The section does not make commitment by a Magistrate competent to award the full sentence prescribed by the Act, a nullity; nor does the section interfere with the jurisdiction of a Court of Session to deal with a matter committed to it in spite of its provisions.

The jurisdiction of a Court of Session depends upon the Code. It has jurisdiction to try any case which is committed to it. The case against the respondent had been committed to a Court of Session by a Magistrate having power to commit. Further, the Magistrate did not lack territorial jurisdiction to commit. It may be that the Magistrate was competent to try the case and award all punishment prescribed by law. It is also true that the Magistrate was not compelled to commit the case to a Court of Session. We are unable to subscribe to the view that a commitment in such circumstances is itself void. Neither do we understand Mulla J. to take the view that apart from S. 21 of the Act, the commitment was void because the learned

> Magistrate could himself have awarded the maximum sentence provided. We have said that S. 21 does not take away the power to commit, nor affect the jurisdiction of a Court of Session to try a case committed to it by a Magistrate empowered to do so. Therefore, it seems to us that the learned Sessions Judge had full jurisdiction to try the case against the respondent.

The ratio of the above decision is that if the case is committed to the Court of Sessions and tried than such trial would not be a nullity, however, it is not necessary to commit the case to the Court of Sessions when the Magistrate is competent to try such offences and award the full punishment prescribed under the Special Statute. In absence of a positive finding that the Court of Judicial Magistrate is incompetent to try the offence punishable under the Act having penalty of life imprisonment, it would not be legal to say that the Court of Judicial Magistrate First Class would not be an appropriate Court for trial. The taste for comptence or jurisdiction is whether the Court is authorised to conduct the trial and can imposse the full punishment prescribed under the Act.

On the point of fairness, during the trial i.e. criminal proceedings is concerned, the say of Mr. AD Shah is also important because normally under Special Statute like the Drugs and Cosmetics Act, PFA Act, Customs Act or Forest Act or any other statute relating to taxation etc. the public servant or the Government officials are empowered to file a complaint and in that contingency, on a private complaint, criminal case is instituted otherwise than the police report, the Magistrate is supposed to issue summons even without recording the statement of complainant on oath. The basic documents even if not produced on the date of filing of the complaint, the process, on the contents of the complaint itself, can be issued and ignoring the scheme of such special Act if the accused is committed, only considering the quantum of punishment to the Court of Sessions, mechanically than on the date of the trial the accused would not have any document or statement of any witness with him irrespective of the scheme of section 207 and 208 of CrPC. Such trial would not be a fair trial and may result into serious prejudice.

It is submitted that the Ld. Additional City Sessions Judge had not called for the R & P from the Court of Metropolitan Magistrate otherwise the say of the present accused was very well there on record and the

case could have been appreciated by the ld. Addl. City Sessions Judge in proper perspective and the Ld. Magistrate also would have assigned reasons for the findings recorded in light of section 404 of CrPC because when a revision application is preferred against the order passed by the Ld. Metropolitan Magistrate, the Metropolitan Magistrate is entitled to send his report as regards to the grounds of his decision and such grounds, if sent, has to be considered by the Court exercising the revisional powers under sec. 397 of CrPC. The statement stating facts and the grounds for its decision of the relevant material to the issue or can be pointed out by the ld. Metropolitan Magistrate and the revisional court supposed to consider the said statement before over ruling or setting aside the decision of the Ld. Metropolitan Magistrate. It is important to quote relevant section 404 of CrPC.

Section:404: "Statement by Metropolitan Magistrate of grounds of his decision to be considered by High Court. - When the record of any trial held by a Metropolitan Magistrate is called for by the High Court or Court of Session under section 397, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order."

It is rightly argued that ld. Metropolitan Magistrate if could have called for R & P even then the findings of ld. Addl. City Sessions Judge could have been otherwise. The interpretation of the decision relied upon by the Ld. Addl. City Sessions Judge is mainly based on the aforesaid two decisions of Allahabad High Court, but the decision of the Calcutta High Court in the case of Ranjit Chatterjee (supra) has been wrongly ignored. The decision of the Calcutta High Court in the case of Ranjit Chatterjee is based on the observations and ratio laid down by the Apex Court, on relevant aspect, in the case of State of Uttar Pradesh v. Khushi Ram (supra). In any of the decision of the Allahabad High court, though all of them are subsequent in point of time to the decision have not considered the case of Khushi Ram (supra). Non obstante clause in number of statute and in enactment have been interpreted. It is prohibitory in nature, there is no scope for the Court to read other parallel or similar provisions of CrPC. So,

the submissions of Mr. Shah shall have to be accepted and the decision of quashing and setting aside the order of Ld. Chief Metropolitan Magistrate, Ahmedabad, rejecting the request to commit the case to the Court of Sessions shall have to be upheld. The committal of case of present petitioners to the court of sessions is neither mandatory or statutorily required. The effect of the decision of the ld. Addl. City Sessions Judge would be, if not set aside, that the case against present petitioners shall have to be committed to the court of sessions.

So, for the reasons aforesaid, the impugned order of ld. Addl. City Sessions Judge (Court no. 10) dated 21.12.2001 in Criminal Revision Application No. 178 of 2001 is hereby set aside. The trial of Criminal Case No. 498 of 1992 against the present petitioner shall be proceeded with in the Court of Ld. Chief Metropolitan Magistrate. Rule is made absolute.

(C.K. BUCH, J.)
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